

Federal Maritime Commission

§ 535.707

§ 535.705 Monitoring report for Class C agreements.

The Monitoring Report form for Class C agreements, with accompanying instructions that are intended to facilitate the completion of the Report, is set forth in appendix E of this part. The explanation and instructions should be read in conjunction with the Shipping Act of 1984 and 46 CFR part 535.

[61 FR 11577, Mar. 21, 1996]

§ 535.706 Filing of minutes—including shippers' requests and complaints, and consultations.

(a) *Meetings.* For purposes of this subpart, the term *meeting* shall include any meeting of the parties to the agreement, including meetings of their agents, principals, owners, committees, or subcommittees of the parties authorized to take final action on behalf of the parties. Where the agreement so authorizes, this includes final action by telephonic or personal polls of the membership.

(b) *Content of minutes.* Except as provided in paragraph (c) of this section, conferences, interconference agreements, agreements between a conference and one or more ocean common carriers, pooling agreements, equal access agreements, discussion agreements, maritime terminal conferences, and marine terminal rate fixing agreements shall, through a designated official, file with the Commission a report of each meeting defined in paragraph (a) of this section describing all matters within the scope of the agreement which are discussed or considered at any such meeting, including shippers' requests and complaints, as well as consultations with shippers and shippers' associations, and shall indicate the action taken. These reports need not disclose the identity of parties that participated in discussions or the votes taken.

(c) *Exemption.* No minutes need be filed under paragraph (b) of this section with respect to any discussion of or action taken with regard to:

(1) Rates that, if adopted, would be required to be published in the pertinent tariff except that this exemption does not apply to discussions limited to general rate policy, general rate

changes, the opening or closing of rates, or service or time/volume contracts; or

(2) Purely administrative matters.

(d) *Serial numbers.* (1) Each set of minutes filed with the Commission should be assigned a number. For example, a conference filing minutes of its first meeting upon the effective date of this rule should assign Meeting No. 1 to its minutes, the next meeting will be assigned Meeting No. 2, and so on.

(2) Any conference or rate agreement which, for its own internal purposes, has a system for assigning sequential numbers to its minutes in a manner which differs from that set forth in paragraph (d)(1) of this section may continue to utilize its own system thereof.

[49 FR 45351, Nov. 15, 1984; 49 FR 48928, Dec. 17, 1984. Redesignated and amended at 57 FR 40619, Sept. 4, 1992. Redesignated and amended at 61 FR 11576, Mar. 21, 1996; 64 FR 11243, Mar. 8, 1999]

§ 535.707 Other documents.

Each agreement required to file minutes pursuant to § 535.706 shall list in said minutes all reports, circulars, notices, statistics, analytical studies or other documents, not otherwise filed with the Commission pursuant to this subpart, which are distributed to the member lines and are used to reach a final decision on any of the following matters:

(a) Revenue projections and plans. (This would exclude individual rate adjustments but would include general rate adjustments, surcharges and other items affecting shipper costs.)

(b) Studies regarding proposed changes to the conference agreement or its membership.

(c) Non-conference competition.

(d) Changes in the nature and type of transportation service generally and specifically at individual ports or points.

(e) Trade tonnage requirements, vessel utilization and vessel replacement plans.

(f) Conference participation in trade (market share).

(g) The exercise of the right of independent action.

(h) Development of transportation technology and intermodal services.

§ 535.708

46 CFR Ch. IV (10–1–03 Edition)

- (i) Malpractices.
- (j) Use of service contracts, time volume rate schemes and loyalty contracts.
- (k) Conference relationship with shippers and shipper groups.
- (l) Governmental and other foreign requirements affecting the conference.

[57 FR 40619, Sept. 4, 1992. Redesignated and amended at 61 FR 11576, Mar. 21, 1996]

§ 535.708 Retention of records.

Each agreement required to file minutes pursuant to this subpart shall retain a copy of each document listed in said minutes for a minimum period of 3 years after the date the document is distributed to the members. Such documents may be requested by the Director, Bureau of Economics and Agreement Analysis, in writing by reference to a specific minute, and shall indicate that the documents will be received in confidence. Requested documents shall be furnished by the parties within the time specified.

[61 FR 11577, Mar. 21, 1996]

§ 535.709 Application for waiver.

- (a) Upon a showing of good cause, the Commission may waive any requirement of this subpart.
- (b) A request for such a waiver must be approved in advance of the filing of the Monitoring Report or minutes to which the requested waiver would apply. The Commission will take into account the presence or absence of shipper complaints in considering an application for a waiver. Requests for a waiver shall state:
 - (1) The specific requirements from which relief is sought;
 - (2) the special circumstances requiring the requested relief; and
 - (3) why granting the requested waiver will not substantially impair effective regulation of the agreement.

[61 FR 11576, Mar. 21, 1996]

Subpart H—Mandatory and Prohibited Provisions

§ 535.801 Independent action.

- (a) Each conference agreement shall specify the independent action ("IA") procedures of the conference, which

shall provide that any conference member may take independent action on any rate or service item upon not more than 5 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(b)(1) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 5 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the tariff publication requirements of this chapter.

(2) A conference agreement shall not prescribe notice periods for adopting, withdrawing, postponing, canceling, or taking other similar actions on independent actions.

(c) Each conference agreement shall indicate the conference official, single designated representative, or conference office to which notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(d) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the publication of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action.

(e) A conference agreement shall specify that any new rate or service item proposed by a member under independent action (except for exempt commodities not published in the conference tariff) shall be included by the conference in its tariff for use by that member effective no later than 5 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.